

United States District Court Southern District of Texas

Case Number: 05CV1847

ATTACHMENT

Description:

☐ State Court Record ☒ State Court Record Continued

☐ Administrative Record

☒ Document continued - Part 12 of _____

☐ Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 things that you didn't think were important were
2 not written down?

3 A. I might sometimes make a note where
4 something significant did not happen in my
5 interview with him.

6 Q. My question is: You didn't write down
7 everything that took place during each of the
8 contacts; right?

9 A. Yes.

10 Q. Your subjective decision as to what
11 was noteworthy to you is what was written down;
12 correct?

13 A. I wrote down my clinical observations
14 of what happened during our interview.

15 Q. Your observations?

16 A. Yes, sir.

17 Q. But not everything that took place?

18 A. No, sir.

19 Q. Okay. At the time that you made your
20 first assessment, you don't know how long you
21 spent with Mr. Eldridge?

22 A. No, sir, I don't remember.

23 Q. Was it three hours?

24 A. No, sir.

25 Q. Was it one hour?

1 A. No, sir.

2 Q. Was it fifteen minutes?

3 A. Was anywhere from fifteen to thirty
4 minutes.

5 Q. During that fifteen to thirty minute
6 period while making this assessment, did you
7 have his school records?

8 A. No, sir.

9 Q. Did you have employment records?

10 A. No, sir.

11 Q. Had you had occasion to speak to any
12 family members?

13 A. No, sir.

14 Q. Did you have any history of any mental
15 illness that you were aware of?

16 A. No.

17 Q. Based upon your fifteen to thirty
18 minute assessment of Mr. Eldridge, you made an
19 assessment in that case?

20 A. Well, according to my notes, I didn't
21 make any assessment; I wrote only observations.

22 Q. Tell me what -- you talked about
23 impressions that you came up with. Would you
24 please give me the phrase that you used?

25 A. Diagnostic impressions.

1 Q. Diagnostic impressions. Now, that's
2 different than a diagnosis; correct?

3 A. That's correct.

4 Q. Because you're not qualified to make a
5 diagnosis; are you?

6 A. No, the diagnosis comes with the
7 physician.

8 Q. Okay. So you're giving somebody else
9 your impression of what you thought was
10 important?

11 A. That's correct.

12 Q. Okay. And back on January 7th of
13 1993, I am sorry, what was your initial
14 assessment of Mr. Eldridge on January 7 of 1993?

15 A. I observed him to be presenting
16 himself to be paranoid, and he spoke in a low
17 voice with stutter-like speech.

18 Q. All right. And what impressions did
19 you make?

20 A. I did not make an impression at that
21 time.

22 Q. All right. What about on January 8th
23 of 1993?

24 A. What about it? What are you asking?
25 What are you asking?

1 Q. What were your diagnostic impressions
2 at that time?

3 A. I did not get a diagnostic impression,
4 but I wrote that I questioned psychosis versus
5 malingering.

6 Q. Okay. So, within a twenty-four hour
7 period of talking to Mr. Eldridge, you are
8 narrowing your view to either a psychosis or
9 malingering?

10 A. That's correct.

11 Q. If you're narrowing it to psychosis or
12 malingering, obviously at that point you did not
13 necessarily believe that there was a psychosis;
14 correct?

15 A. I wasn't sure at that time whether
16 there was a psychosis or if it was malingering.

17 Q. Are there only two explanations for
18 the circumstances that he presented to you
19 during your assessment of him on January 7th?

20 A. At that time -- psychosis is a broad
21 term. I mean, I could use --

22 Q. Let me just ask you to answer the
23 question. Are there only two impressions that
24 you could have derived?

25 A. No, sir.

1 Q. How many diagnostic impressions could
2 you have come up with based on your fifteen to
3 thirty minute assessment of Mr. Eldridge on
4 January 7th of 1993?

5 A. There are many.

6 Q. How many?

7 A. I don't know how many. There is an
8 entire book of them.

9 Q. Well, you know, I'm fishing for some
10 kind of number. You're the person that has
11 studied psychology, you got your master's
12 degree. Are there one hundred?

13 A. I would say at least.

14 Q. Are there two hundred?

15 A. No, sir.

16 Q. Somewhere in between a hundred and two
17 hundred?

18 A. No, sir. About a hundred, I think.

19 Q. A hundred different diagnostic
20 impressions that a person can come up with based
21 on an assessment?

22 A. Uh-hum.

23 Q. You narrowed it to two?

24 A. Yes.

25 Q. One of them being malingering?

1 A. One of them being malingering.

2 Q. When the prosecutor asked you about
3 the way he presented himself, and I'm not sure
4 at what point this was, but you talked a little
5 bit about tears?

6 A. Uh-hum.

7 Q. She asked whether they were real or
8 imagined. Was he actually crying?

9 A. No, he was actually crying.

10 Q. Wasn't like he had splashed water on
11 his face?

12 A. No, sir.

13 Q. You were trying to determine from your
14 standpoint whether or not those tears came about
15 as a result of what?

16 A. Well, I was curious to know why he was
17 so upset.

18 Q. What was your diagnostic impression as
19 to why he was crying?

20 A. I didn't make one at that time, I
21 don't think.

22 Q. At what point did the treatment team
23 come to you or have contact with you and ask you
24 what was wrong with Gerald Eldridge? At one
25 point you said the treatment team wanted to know

1 what was wrong with him. Is that the purpose of
2 doing an assessment?

3 A. The purpose of me seeing him weekly is
4 so that we can all come up with some consensus
5 on what is wrong with him.

6 Q. Now, tell us, when he is brought into
7 the psychiatric unit on January 7th of 1993, he
8 is actually admitted to that unit?

9 A. Yes, sir. I don't know. It might
10 have been earlier than the 7th. Maybe a day or
11 two earlier.

12 Q. So may have been earlier, prior to
13 your assessment of him?

14 A. Yes.

15 Q. How long did he physically stay?
16 Until 14th of January. We're going to say at
17 least minimum of seven days?

18 A. That's correct.

19 Q. During that period of time, how many
20 contacts did you have with him?

21 A. I had four contacts with him.

22 Q. At anytime during those four contacts,
23 the first being January 7th, the second being
24 the 8th, when malingering is identified as one
25 of your diagnostic impressions, from that point

1 forward, does your diagnostic impression ever
2 change?

3 A. No.

4 Q. When is the first time you got
5 together with other members of the team?

6 A. I believe on the 11th. That's when
7 the doctor wrote his note.

8 Q. So some four, three to four days
9 elapsed?

10 A. Uh-hum.

11 Q. How many people get together during
12 the first team meeting?

13 A. The same amount of people for all the
14 team meetings, anywhere from four to six
15 people.

16 Q. How long does the team stay
17 assembled? By that I mean are there like, is it
18 the same team for two or three months at a time?

19 A. No, it's the same team until somebody
20 leaves the position or goes somewhere else.

21 Q. How long were you a member of this
22 particular team? Or are you still a member of
23 that team?

24 A. I'm still a member. The team players
25 have changed, but I'm still a member of this

1 team.

2 Q. You referred to yourselves as team
3 players?

4 A. I mean, team people who participated
5 in this team.

6 Q. Uh-huh. Okay. So who are the team
7 players, if you will?

8 A. Team members are at this point Doctor
9 Arfa.

10 Q. I thought Doctor Arfa was in Dallas?

11 A. I mean, Doctor Robashkin at this
12 time. It was Doctor Arfa.

13 Q. So he was a replacement?

14 A. Doctor Robashkin?

15 Q. For Doctor Arfa?

16 A. No, he was actually replacement for
17 Doctor Ferguson.

18 Q. Which one? Who is on first?

19 A. Doctor Arfa is first, Doctor Stokes is
20 next, Doctor Ferguson is next and Doctor
21 Robashkin is the physician who is on the team
22 now.

23 Q. Is Doctor Silverman on the team
24 anywhere?

25 A. Doctor Silverman is not on the team.

1 Q. Okay. Doctor Arfa is not on the team?

2 A. No.

3 Q. Doctor Ferguson is not on the team?

4 A. No.

5 Q. And is Doctor Ferguson in some other
6 jail facility?

7 A. No, she is still at the Harris County
8 jail.

9 Q. Different team?

10 A. No, she is not on any team now.

11 Q. She retired?

12 A. No.

13 Q. All right. From the time of January
14 7th or 8th, when malingering is first assessed,
15 up through the last contact that you had and, as
16 far as you know, the last contact, excuse me,
17 anybody from the team had with Gerald Eldridge,
18 malingering is written all over it?

19 A. Everybody suspected that his symptoms
20 were not genuine.

21 Q. His history on the unit, if you will,
22 was well known to the members of the team;
23 right?

24 A. We worked with him, yes.

25 Q. So I guess the answer to my question

1 is yes, that his history on the unit was well
2 known to the members of the team?

3 A. Yes.

4 Q. So he was there for a seven day period
5 beginning of January of '93, then he comes back
6 in February and stays for approximately a five
7 or six day stay; right?

8 A. Yes.

9 Q. And how did he get re-admitted? Who
10 re-admitted him?

11 A. The second time or the first time?

12 Q. Second time.

13 A. Second time? I believe it was through
14 a referral from the jail. I'm not sure, though.

15 Q. So the defendant doesn't just present
16 himself, say I want to check in?

17 A. That's correct.

18 Q. Physically he has got to be brought
19 there from somebody else that has made
20 observation of him; right?

21 A. Yes, that's correct.

22 Q. Somebody that is not in an environment
23 such as yours on the psychiatric wing where he
24 is being brought to, somebody sitting down
25 saying, well, now, this person is going to ask

1 you some questions or they're going to have some
2 kind of interaction with you?

3 A. That's correct. Most of the time it's
4 a deputy.

5 Q. Help me understand. The next time
6 that he is re-admitted to the psychiatric ward,
7 after he is discharged on March third of 1993,
8 when is he brought back again?

9 A. In October of 1993.

10 Q. October 7 of 1993?

11 A. Yes.

12 Q. Y'all still believe he is malingering
13 at that point?

14 A. Yes.

15 Q. How long does he stay there?

16 A. He stays there until after January the
17 tenth of '94. I don't know the specific date,
18 but that's the last time I saw him.

19 Q. So you keep him there on the ward from
20 October, November, December, January?

21 A. Yes.

22 Q. At that point, he is put back in the
23 general population?

24 A. Yes.

25 Q. During that whole period of time, you

1 thought he was malingering?

2 A. We were observing him. The third time
3 he was brought down to the hospital, the only
4 purpose he was brought down was for observation
5 because there was still a question of whether
6 there was a psychotic disorder or malingering,
7 so we observed him from October through January
8 or February, whatever.

9 Q. And the things that have been
10 established in your mind as far back as January
11 7th and 8th is malingering was high on the list
12 of diagnostic impressions, one of two; correct?

13 A. Due to the behaviors he exhibited, yes.

14 Q. And the only notes that you took, the
15 only notes that we heard about are all ones that
16 affirm your diagnostic impression that he was
17 malingering; correct?

18 A. Yes.

19 Q. And, in fact, by December 9 of 1993,
20 the phrases that you used to describe, or even
21 going back to December 8th of 1993, these are
22 your phrases, these are your words -- that he is
23 manipulative and deliberately exaggerating
24 symptoms. Then on the 9th of December,
25 dramatic, theatrical, manipulative. These are

1 your particular words trying to describe your
2 impressions of him. These to me -- correct me
3 if I'm wrong -- they seem to be stronger
4 statements of your impression of his
5 malingerer.

6 A. Those are the words that the manuals
7 that we use to write our notes, those are the
8 words that the manuals use, yes, when somebody
9 with his history is on the unit, yes.

10 Q. Why do y'all use the phrase consumer
11 for somebody on the psychiatric ward?

12 A. That's a phrase that MHMRA has
13 required for us to use.

14 Q. Okay. You ever had a hallucination
15 yourself?

16 A. No.

17 Q. So would you have any idea, other than
18 what you read and literature that you read, as
19 to how actually somebody perceives a
20 hallucination?

21 A. What's the question again?

22 Q. Other than reading what other people
23 say a hallucination is like, you give some
24 pretty pointed testimony he was not having an
25 hallucination.

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A. That's correct.

Q. That he was faking it.

A. That's correct.

Q. But you never had one yourself anymore than I have, I think?

A. No, sir.

Q. Okay. You have free access in and out of the jail?

A. Yes, sir.

Q. You got your tag there that identifies you as, what, a member of MHMRA that gives you clearance through the jail?

A. Yes, sir.

Q. All team members have that?

A. Yes, sir.

Q. And your office is over in the jail?

A. Yes, sir.

Q. Are all the offices of the individuals that are on the team over there in the jail?

A. Yes, sir.

MR. HILL: I pass the witness.

1 REDIRECT EXAMINATION

2 BY MS. ALCALA:

3 Q. Tell me at what point, at what date,
4 you decided he was malingering and that it was
5 not psychosis.

6 A. I believe it was shortly before he was
7 discharged the first time.

8 Q. Which was what date?

9 A. January the 14th, 1993.

10 Q. The day he was discharged?

11 A. Yes.

12 Q. And, up until that time, you'd seen
13 him five times before? So you just didn't jump
14 to this conclusion of malingering?

15 A. That's correct. Four times.

16 Q. Up to that time, you were at least
17 willing to consider that in fact it was a true
18 psychosis?

19 A. That's correct.

20 MS. ALCALA: No other questions.

21 MR. HILL: No further questions, Your
22 Honor.

23 THE COURT: Thank you. You may step
24 down.

25 Members of the jury, we'll go ahead

1 and stand in recess this afternoon, once again,
2 until 9:30 in the morning, when we'll resume
3 trial. And I think, once again, we'll be able
4 to conclude the remainder of the testimony
5 tomorrow morning, have argument, hopefully,
6 before lunch time. Please remember all the
7 admonishments of before. Do not discuss the
8 case with friends or family or with each other
9 until the case has been concluded. Meet once
10 again outside in the hallway down by room 734.
11 We'll be back down there, more likely than not,
12 tomorrow for the conclusion of the trial. So
13 we'll see you all tomorrow morning.

14 (End of day's proceedings)
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TRIAL COURT NO. 9403201
APPELLATE COURT NO. _____
IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TEXAS
AT AUSTIN

GERALD CORNELIUS ELDRIDGE,
Appellant

VS.

THE STATE OF TEXAS,
Appellee.

APPEAL FROM 178TH DISTRICT COURT OF HARRIS COUNTY,
TEXAS

Judge William T. Harmon Presiding

STATEMENT OF FACTS
VOLUME 5 OF 36 VOLUMES

March 2, 1994

Ida M. Garcia
Official Court Reporter
301 San Jacinto
Houston, Texas 77002

FILED IN
COURT OF CRIMINAL APPEALS
AUG 17 1994
Thomas Lowe, Clerk

1 INDEX

2 VOLUME 5

3 March 2, 1994

4 HEARING ON JURY MISCONDUCT

	<u>Page</u>
5 JOSEPH LICATA	
6 Direct	246
6 Cross	251
7 Redirect	260
7 Recross	261
8 Redirect	262
9 JUROR RICHARD BAKER	
9 By the Court	266
10 By the Defense	273
10 By the State	280
11 By the Defense	284
11 JUROR BOB JOHNSON	
12 By the Defense	287
12 By the State	298
13 By the Defense	304
14 JUROR CHERYL WELFL	
15 By the Defense	310
15 By the State	318
16 By the Defense	321
16 JUROR RUTH McNALLY	
17 By the Defense	325
18 By the State	332
18 JUROR BOB JOHNSON	
19 By the Defense	337
20 By the State	341
20 JUROR BUEL SHASTID	
21 By the Defense	349
21 By the State	364
22 By the Defense	370
23 MOTION DENIED	376

ALPHABETICAL INDEX

VOLUME 5

	<u>Page</u>
BAKER, RICHARD	
By the Court	266
By the Defense	273
By the State	280
By the Defense	284
JOHNSON, BOB	
By the Defense	287
By the State	298
By the Defense	304
By the Defense	337
By the State	341
LICATA, JOSEPH	
Direct	246
Cross	251
Redirect	260
Recross	261
Redirect	262
MCNALLY, RUTH	
By the Defense	325
By the State	332
SHASTID, BUEL	
By the Defense	349
By the State	364
By the Defense	370
WELFL, CHERYL	
By the Defense	310
By the State	318
By the Defense	321

1
2
3
4
5
6
7
8
9
10
11
12
13
14
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CAUSE NO. 9403201

STATE OF TEXAS IN THE 178TH DISTRICT COURT
VS. OF
GERALD CORNELIUS ELDRIDGE HARRIS COUNTY, TEXAS

A P P E A R A N C E S:

For the State: Ms. Elsa Alcala
 Mr. Don Smyth
 Assistant District Attorneys
 Harris County, Texas

For the Defendant: Ms. Denice Crawford
 Mr. Wayne Hill
 Attorneys at Law
 Houston, Texas

BE IT REMEMBERED that upon this the
2nd day of March A.D. 1994, the above entitled
and numbered cause came on for trial before the
Honorable William T. Harmon, Judge of the 178th
District Court of Harris County, Texas; and the
State appearing by counsel and the Defendant
appearing in person and by counsel, the
following proceedings were had, viz:

1 (State's Exhibits Nos. 5, 6, 7 and 8
2 marked for identification).

3 MR. HILL: Judge, if it please the
4 court, this morning, when I came to court to
5 meet with Ms. Crawford, it was brought to my
6 attention that Joseph Licata, an attorney
7 licensed in the State of Texas, which I believe
8 the court as well as the State knows Mr. Licata
9 as a practicing criminal defense lawyer in
10 Harris County, Texas, came and informed us that
11 as he was going towards the coordinator's office
12 in County Criminal Court at Law No. 14, which
13 shares the hallway to this courtroom where we
14 are presently having our incompetency trial, he
15 overheard an individual talking about witnesses
16 in competency type hearing where the Defense
17 lawyers essentially hire, pay an individual to
18 get a particular result, that they have a
19 particular motive to testify favorably for the
20 defense and that contra, that the State
21 witnesses have no such motive, that they come in
22 and just testify freely and honestly. Mr.
23 Lacata indicated he then went into the
24 coordinator's office in County Court No. 14 and
25 upon exiting and coming back down the hallway

1 that individual was continuing to talk.

2 THE COURT: Hold on a minute.

3 MR. SMYTH: Let's put it under oath.
4 He can testify.

5 THE COURT: Yeah, rather than have
6 Wayne recite what Joe has told him, Don, your
7 preference is to go ahead and have Joe put under
8 oath, tell us what he knows?

9 MR. SMYTH: Sure.

10 MR. HILL: Because, Joe, there was
11 more than one person involved; there may have
12 been four or five.

13 THE COURT: Here is my problem. I
14 don't have any reason to dispute what Wayne is
15 telling me if--.

16 MR. HILL: Judge, I was just trying to
17 outline for you. I was intending to call Joe.

18 THE COURT: My point is why even.
19 Obviously there's not a necessity to call Joe.
20 I believe Wayne is telling me what Joe told him
21 this morning.

22 MR. HILL: To go one step further.

23 MR. SMYTH: Could I finish, please?

24 THE COURT: I'm just trying to cut
25 down what we got to hear. If you want to let

1 Wayne's summarization of what Joe has said
2 suffice or not, hear from Joe.

3 MR. SMYTH: We want it under oath.

4 THE COURT: Let's do that.

5 MR. HILL: I wasn't trying to
6 summarize for personal evidence. I thought Mr.
7 Smyth wanted to know.

8 MR. SMYTH: I got the drift. I've
9 been around here about seventeen years. I've
10 seen it before.

11 THE COURT: Okay. Joe, would you
12 please, raise your right hand.

13 (Oath administered to attorney Joe
14 Licata).

15 THE COURT: Please be seated right up
16 here on the witness stand up here.

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JOSEPH LICATA

was called as a witness by the Defense and,
having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HILL:

Q. Would you, please, state your name for
the record?

A. Joseph Licata.

Q. How are you employed, Mr. Licata?

A. I am an attorney.

Q. Do you practice in Harris County,
Texas?

A. Yes, I do.

Q. Are you licensed by the State Bar of
Texas?

A. Yes.

Q. And how long have you been a
practicing lawyer in Texas?

A. Since '79.

Q. And are you licensed in any other
states?

A. Florida.

Q. All right. Could you just briefly
tell us what your background is in the practice
of law?

1 A. I do mostly criminal law, some
2 personal injury, former prosecutor in Florida.

3 Q. All right. Today is March 2nd, 1994;
4 is that correct?

5 A. Yes.

6 Q. Did you have an occasion to be on the
7 seventh floor of the Harris County Criminal
8 Courthouse located at 301 San Jacinto earlier
9 this morning?

10 A. Yes.

11 Q. Today's time is approximately twelve
12 minutes after ten a.m.; is that correct?

13 A. Yes.

14 Q. All right. Approximately what time
15 were you up on the seventh floor of this
16 building this morning?

17 A. I was up here several times this
18 morning. I had a case set in Judge Barkley's
19 court, County Court 14, two or three times
20 between 8:20 and about 9:15. I reset the case
21 prior to docket call, so I don't know what time
22 they called the docket.

23 Q. Okay. For purposes of the record,
24 County Criminal Court No. 14, is that located
25 near the courtroom that you're presently sitting

1 in, testifying in?

2 A. Right across the hall.

3 Q. And this is not the actual courtroom
4 for the 178th District Court that we're in right
5 now; is that correct?

6 A. Yes.

7 Q. This is commonly referred to as one of
8 the jury selection rooms for capital murder
9 cases?

10 A. Yes.

11 Q. And this is the one that is -- would
12 be to the extreme west-hand side of the two
13 particular rooms?

14 A. I believe so.

15 Q. All right. Would you, please, relate
16 to the court what you observed or what you heard
17 this morning as you were proceeding to County
18 Criminal Court at Law No. 14.

19 A. As I was exiting County Court 14,
20 going down the hallway to the coordinator's
21 office, I had to pass a bench in the hallway.
22 There were three, maybe four people seated on
23 the bench. They were all wearing the purple
24 badges, jury badges. One man in particular,
25 they were having a discussion, but one man in

1 particular was dominating the discussion. They
2 were talking about expert witnesses. He was
3 giving his opinion that expert witnesses that
4 were hired by the defense to come in and testify
5 were more inclined to say what they were paid to
6 say because if they didn't then they won't be
7 hired by defense attorneys; whereas, experts
8 that work for the State get paid the same no
9 matter what they say. That was the gist of what
10 he was saying to the other jurors sitting out
11 there.

12 Q. And did you state the other
13 individuals that you saw seated there were
14 likewise wearing purple badges?

15 A. Yes.

16 Q. All right. Did you have an occasion
17 to look closely at the badge to see if there was
18 a judge's name on that particular tag?

19 A. On the way out of the coordinator's
20 office back to the courtroom, they were still
21 having basically the same conversation about
22 testimony and witnesses, so I looked down at the
23 one gentleman who was doing most of the
24 talking. I didn't have my glasses on, I first
25 thought it said Judge Hearn, then upon closer

1 examination I discovered it was Judge Harmon's
2 badge. So then I went over to the 178th, which
3 is down the hall the other direction, and
4 inquired as to whose jury this was.

5 Q. And did you learn that it was the jury
6 that was impaneled to hear a contested
7 competency hearing in a capital murder case?

8 A. Yes. They had another jury over there
9 with white badges. I was inquiring as to
10 whether they were all wearing the same badges,
11 then I was informed there were two separate
12 hearings going on at the same time, that this
13 was a case being handled by Denice Crawford.

14 Q. Okay. And Ms. Crawford is the
15 attorney seated to my immediate right in this
16 courtroom at the present time?

17 A. Correct.

18 Q. Approximately how much time had
19 elapsed in between the time that you first made
20 the observation and heard this juror talking and
21 the second time that you came out and observed
22 that the conversation was still continuing?

23 A. Roughly, maybe ten minutes, probably
24 closer to five.

25 Q. Did it appear that there were as many

1 as twelve people there, that they were
2 deliberating in the case, or could you tell?

3 A. It sounded like a jury deliberation,
4 but there was only three or maybe four people
5 present. I believe four.

6 MR. HILL: I'll pass the witness.
7 Thank you, Mr. Licata.

8 CROSS EXAMINATION

9 BY MR. SMYTH:

10 Q. Mr. Licata, how long did you stand
11 there and listen to these people's conversation?

12 A. Just long enough to walk in and long
13 enough to walk out.

14 Q. Well, how long was it that you were
15 standing there and you heard this conversation
16 that you're talking about?

17 A. A few seconds.

18 Q. A few seconds in passing?

19 A. Yes.

20 Q. Did you stop and stare and look at
21 them?

22 A. Only on the way out when I was trying
23 to see what the badge said.

24 Q. Okay. And how much total time do you
25 think you overheard these people you claim are

1 jurors in this particular court in this case
2 talking?

3 A. Long enough to walk the thirty or
4 forty feet from the front of the courtroom to
5 the coordinator's office, then the same distance
6 back.

7 Q. Were they talking loud enough so you
8 could hear them for this entire thirty or forty
9 feet?

10 A. The one fella was talking loud where I
11 could hear him if I was standing by the entrance
12 of County Court 14, yes.

13 Q. How many other people were in the
14 hall?

15 A. On the way out, I commented to another
16 attorney, I can find out his name, and he heard
17 them talking, but he was apparently, he didn't
18 want to get involved. So his comment to me, "I
19 keep my ears closed." But I made a comment to
20 him, "I can't believe they were having that type
21 of discussion." Sounded -- in fact, I told him
22 it sounds like they're deliberating.

23 Q. Okay. You say the total time you
24 heard them was a couple of seconds?

25 A. Several seconds. However long it

1 takes to walk thirty, forty feet.

2 Q. Well?

3 A. Fifteen, twenty seconds. I don't know
4 if you're trying to pin it down.

5 Q. Fifteen, twenty seconds, maximum?

6 A. Right.

7 Q. Describe the people that were doing
8 the talking.

9 A. The one gentleman that was doing most
10 of the talking, I believe, as I was looking to
11 see who the attorneys were handling the case, so
12 I opened these two doors, is sitting facing the
13 same direction that I am against that wall. He
14 is wearing a shirt and slacks.

15 Q. Okay. What color shirt?

16 A. I believe a striped shirt. I'm not
17 certain.

18 Q. What color striped shirt?

19 A. I'm not certain.

20 Q. What color slacks?

21 A. I don't know.

22 Q. Does he have a full head of hair? Is
23 he bald-headed?

24 A. Full head of hair, I believe. I
25 believe he is wearing glasses.

1 Q. Does he have a beard, mustache?
2 A. I don't believe he does.
3 Q. Wearing a coat?
4 A. No.
5 Q. Okay. You say he was the one doing
6 most of the talking?
7 A. Right.
8 Q. Was he a white male, an Asian male,
9 black male?
10 A. White male.
11 Q. What were the people that were
12 listening to him, the four people, what did they
13 look like?
14 A. He was talking to another white male
15 gentleman.
16 Q. What was this person wearing?
17 A. I don't remember.
18 Q. Don't have any idea?
19 A. No.
20 Q. Full head of hair?
21 A. No. I was more concerned with what
22 they were saying, not writing down their
23 descriptions.
24 Q. Glasses?
25 A. The other gentleman didn't have

1 glasses. I believe the one that was doing the
2 talking had glasses. One he was talking to did
3 not.

4 Q. Wearing coat and tie?

5 A. I don't think that either one of the
6 two main people were that I noticed.

7 Q. Don't have any idea what he was
8 wearing?

9 A. No.

10 Q. How about the other, the third person
11 in this conversation who was present?

12 A. I don't remember. Could have been a
13 lady. I'm not certain. I think was one person
14 standing. I'm not even sure about that.

15 Q. Well, did they all four have jurors
16 badges on?

17 A. They all had juror badges, yes.

18 Q. What about the third person, don't
19 know whether it was a male or female. How about
20 the fourth person?

21 A. I don't recall. I believe there was a
22 fourth person, and he may have come after I was
23 walking out, so he may not have been present
24 when I walked in. I believe there was one
25 person standing, three people seated on the

1 bench.

2 Q. Fourth person is a male?

3 A. I believe so.

4 Q. You say I believe so. You assume he's
5 a male?

6 A. I believe so.

7 Q. You're not sure?

8 A. No.

9 Q. Could have been a female?

10 A. Yes.

11 Q. Can you tell us anything about the
12 second person? White male, black male?

13 A. I can't tell you the descriptions. If
14 you want me to describe the badges they were
15 wearing, I can describe the badges. Purple
16 badges. Like I said, I didn't have my glasses
17 on. I noticed they were all wearing the
18 badges. The combination of what they were
19 saying, the fact they were wearing jury badges
20 is what got my attention.

21 Q. Purple badges like Ms. Alcala's shirt?

22 A. No. Kind of violet.

23 Q. Violet?

24 A. Violet purple.

25 Q. But this one guy doing all the

1 talking, sum and substance is you think he was,
2 did you think he was saying, he was commenting
3 somebody might have a motivation to testify one
4 way or another based on whether who paid their
5 bills?

6 A. The sum and substance is that it
7 seemed more appropriate to me walking by that
8 that's the kind of conversation you would have
9 deliberating in a jury room and not have while
10 you're an active juror on a case.

11 Q. Okay.

12 A. That's what caught my attention.

13 Q. Did they talk about whether or not any
14 particular defendant was competent or
15 incompetent?

16 A. Not that I recall. They basically
17 were talking about the fact that expert
18 witnesses hired by the defense would be more
19 inclined to say what they're paid to say versus
20 the State's experts. I didn't even know they
21 were talking about doctors. He kept referring
22 to experts.

23 Q. Okay. That was all they said?

24 A. That's all I heard.

25 Q. Bottom line is that an expert witness

1 paid by a defense would be more inclined to
2 favor the defense than an expert witness who is
3 paid by the State or who worked for the State
4 and whatever; is that what you're saying?

5 A. I believe what he said was that a
6 person that's paid by the defense, if they
7 didn't say what the defense wanted them to say,
8 would not be hired by other defense.

9 Q. That's what he said?

10 A. Yes.

11 Q. What did the rest of them say? What
12 did the second guy say?

13 A. They weren't talking as loud as he
14 was. They were discussing, but basically he was
15 doing, there was one particular fellow that was
16 doing most of the talking.

17 Q. This guy doing most of the talking,
18 what did the number two person say to him?

19 A. He was talking at a tone, you know,
20 just discussion. I didn't hear what he said.

21 Q. So you couldn't say what number two
22 said. You don't know whether he said the sky is
23 blue or let's not talk about this or whatever?

24 A. That's pretty accurate.

25 Q. How about the number three person?

1 A. Same.

2 Q. Male or female?

3 A. Just heard the one guy.

4 Q. You just heard the one guy?

5 A. Right.

6 Q. You really didn't hear the others
7 agreeing or disagreeing?

8 A. No.

9 Q. You don't know whether the others
10 said, hey, we can't talk about this or not?

11 A. No.

12 Q. You don't know whether the others
13 said, hey, man, this is not the time or place or
14 whether they were talking about the Rockets'
15 victory last night?

16 A. I don't know whether they said that,
17 but certainly had plenty of time to say that if
18 the judge hadn't instructed them to do so. So I
19 would assume that the other people, whatever
20 they were saying, weren't saying that because,
21 like I said, he talked for several minutes.

22 Q. Okay. But I mean you can't say --

23 A. I can't say what the other people were
24 saying.

25 Q. All you can say is what one person was

1 saying?

2 A. What one fella was saying.

3 Q. You can't say they engaged in any kind
4 of conversation or were agreeing with him or
5 disagreeing or telling him you need to be quiet?

6 A. They were engaged in conversation, but
7 their tone of voice was such that I couldn't
8 tell what they were saying.

9 Q. They could have been talking about
10 anything, the weather or whatever?

11 A. Correct.

12 Q. Okay.

13 MR. SMYTH: I have nothing further,
14 Your Honor. Thank you.

15

16 REDIRECT EXAMINATION

17 BY MR. HILL:

18 Q. Mr. Licata, after your initial
19 observation and hearing of this conversation,
20 obviously you went and did something else, then
21 came back out and there was still some
22 discussion going on; is that correct?

23 A. Yes.

24 Q. So there was a lapse of time in
25 between the first time you heard something and